

Assembly Bill No. 1795

CHAPTER 365

An act to amend Sections 48001, 48002, 48002.5, 48003, 76750, 79222, 79271, and 79292 of, and to repeal Section 75540 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 25, 2010. Filed with
Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1795, Committee on Agriculture. Agriculture: California Citrus Advisory Committee: California Apple Commission: California Salmon Council: California Blueberry Commission.

(1) Existing law provides that there is in the Department of Food and Agriculture the California Citrus Advisory Committee, comprised as specified. The committee is required to develop and make recommendations to the Secretary of Food and Agriculture on all matters regarding the implementation of certain provisions of law relating to citrus fruit crops, including certain specified matters. Existing law requires producers of navel oranges, Valencia oranges, lemons, or mandarin citrus varieties grown in this state and prepared for fresh market in certain counties of the state to pay an assessment, as provided, based on the number of cartons shipped. The assessment is for the purpose of conducting an inspection program in certain counties in the state and funding a crop survey program.

This bill would require the committee to annually recommend to the secretary the assessment rate and would instead provide that the assessment be based on the number of 40-pound carton equivalents produced. The bill would also define "carton" to mean a unit equivalent to 40 pounds of citrus fruit.

Existing law authorizes the committee to recommend to the secretary that no assessment, as described above, be collected from these growers of navel oranges, Valencia oranges, lemons, or mandarin citrus varieties if no inspection program or crop survey exists for that particular orange or citrus variety.

This bill would also authorize the committee to recommend to the secretary an assessment less than the amount specified in existing law.

This bill would provide that the adoption, amendment, or repeal of assessment rates shall not be subject to certain rulemaking provisions. The bill would authorize the secretary to issue an order to adopt, amend, or repeal the regulations concerning assessment rates. This order, which the bill would require to contain specified information and to be transmitted within 30 days by the secretary to the Office of Administrative Law, would be required

to be filed promptly with the Secretary of State by the Office of Administrative Law without further review.

Existing law requires the assessment to be collected from the producer by the first handler, as defined, and remitted to the department by that handler, along with an assessment form, at the end of each month during the marketing season. Under existing law, it is unlawful, upon the establishment of an inspection program, for any handler to refuse to collect the assessments or remit the assessments and the proper forms.

This bill would prohibit a handler from charging a producer an administrative fee for collecting or remitting an assessment. The bill would authorize a producer who disputes the assessment amount to file a claim with the secretary and would provide that a producer may not bring a claim against a handler for damages, or otherwise, in connection with the assessment or the required deduction by the handler of the moneys owed to the producer. By imposing new requirements on handlers and producers, the violation of which would be a crime, the bill would create new crimes and would thereby impose a state-mandated local program.

(2) Existing law establishes in state government the California Apple Commission, which consists of 12 apple producer and handler members and one public member. Existing law specifies that the term of office of each member of the commission, except ex officio members, is 4 years, and limits the number of terms of office of each member to 4 consecutive terms.

This bill would delete the limitation on the number of terms of office.

(3) Existing law establishes in state government the California Salmon Council and provides that the council may, subject to the approval of the Secretary of Food and Agriculture, exercise specified powers which may be delegated to the council by the secretary, including, among others, the power to make contracts and other agreements to promote the sale of salmon and salmon products on either a local, state, national, or international basis.

This bill would also authorize the council to present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the provisions relating to the council.

(4) Existing law establishes in state government the California Blueberry Commission and requires the commission, by March 1 of each year, or as soon thereafter as possible, to establish an annual assessment to be paid by producers and handlers of blueberries for the marketing season, which is defined to mean the period beginning March 1 of any year, and extending through the last day of February of the following year.

This bill would instead require the commission to establish the assessment by March 1, 2010, or as soon thereafter as possible, and, thereafter, by October 1 of each year, or as soon thereafter as possible. The bill would revise the definition of “marketing season” to mean the period beginning March 1, 2010, to September 30, 2011, and, thereafter, beginning October 1 of any year and extending through September 30 of the following year.

Existing law requires the Secretary of Food and Agriculture to hold a public hearing 5 years after implementation of the provisions establishing

the commission to determine whether the commission should be continued, and every 5 years thereafter between March 1 and February 28.

This bill would change the dates between which this public hearing must be conducted and this determination made every 5 years to October 1 and September 30.

(5) This bill would also make various technical and clarifying changes.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 48001 of the Food and Agricultural Code is amended to read:

48001. (a) There is in the department the California Citrus Advisory Committee.

(b) The committee shall be comprised as follows:

(1) Eight producers.

(A) Five producer members shall be engaged in the production of navel or Valencia oranges; four of which shall be engaged in the production of navel or Valencia oranges in the San Joaquin Valley, and two of the four members shall be engaged in the production of navel or Valencia oranges in Tulare County.

(B) Two producer members shall be engaged in the production of lemons, one of which is engaged in the production of lemons in Ventura County.

(C) One of the members shall be engaged in the production of mandarin citrus.

(2) Four handlers, which have their principal place of business located in one of the following counties: Fresno, Kern, Madera, Orange, Riverside, San Bernardino, Santa Clara, Tulare, and Ventura.

(A) Two handler members shall be located in the San Joaquin Valley.

(B) One handler member shall be engaged in the handling of lemons in Ventura County.

(c) The committee shall be appointed by the secretary from nominations submitted to the secretary by members of the navel orange, Valencia orange, lemon, and mandarin citrus industries group.

(d) Committee members may be compensated for reasonable expenses actually incurred in the performance of their duties, as determined by the committee and concurred in by the secretary.

(e) The committee shall meet at the request of the secretary, the committee chairperson, or upon the request of three committee members.

(f) The committee shall appoint a chairperson, one or more vice chairpersons, and any other officers it deems necessary.

(g) The committee shall develop and make recommendations to the secretary on all matters regarding the implementation of this chapter including:

(1) The assessment rate as specified in Section 48002.

(2) Procedures for implementing an inspection program that shall include, but not be limited to, the following:

(A) Mandatory hold for inspection prior to shipping, following a citrus freeze.

(B) The minimum number of inspections to be conducted, and the duration of each inspection period.

(C) The minimum number of samples to be taken.

(D) Statistical analysis of compliance levels and determination of an acceptable level of compliance.

(E) Documentation of inspection data including the number of inspectors, number of inspections performed, and budget information relating to expenses of personnel, mileage, and overhead costs.

(F) Monitoring and postevaluation of program effectiveness by the secretary.

(G) Development of a single memorandum of understanding between the department and all county agricultural commissioners for the counties specified in subdivision (b).

(3) Determinations as to which counties have met the inspection requirements.

(4) Procedures for implementing a state crop estimating and acreage survey.

(h) The secretary shall accept the recommendations of the committee if he or she determines that the recommendations are practicable and in the interest of the industry and the public. The secretary shall provide the committee within 30 days of receipt of the recommendations with a written statement of reasons if he or she does not accept any of the recommendations.

SEC. 2. Section 48002 of the Food and Agricultural Code is amended to read:

48002. (a) In addition to any other assessment, fees, or charges that may be required pursuant to this code, producers of navel oranges, Valencia oranges, lemons, or mandarin citrus varieties grown in this state and prepared for fresh market in the Counties of Fresno, Kern, Madera, Orange, Riverside, San Bernardino, Santa Clara, Tulare, and Ventura shall pay an assessment that shall not exceed 11 mills (\$0.011) per carton for navel oranges, 5 mills (\$0.005) per carton for lemons, and 6 mills (\$0.006) per carton for Valencia oranges and mandarin citrus. The assessment shall be:

(1) Commencing April 1, 2011, recommended annually by the committee and submitted to the secretary for approval in amounts not to exceed those specified above.

(2) Based on the number of 40-pound carton equivalents produced.

(3) Used to reimburse agricultural commissioners, pursuant to a contract between the department and the commissioners, in the counties specified

in this section, who meet the requirements of the inspection program as determined by the committee and concurred in by the secretary.

(4) Used to establish a reserve to fund the frost inspection program. The reserve amount shall be determined by the committee.

(5) Used to fund a program within the department to provide the industry with a state crop estimating service and an acreage survey.

(6) Collected from the producer by the first handler. For the purposes of this chapter, “producer” means a grower of navel oranges, Valencia oranges, lemons, or mandarin citrus and “handler” means a person or entity who receives navel oranges, Valencia oranges, lemons, or mandarin citrus from a producer and who prepares the oranges, lemons, or mandarin citrus for fresh market. If a producer prepares the oranges, lemons, or mandarin citrus for market, the producer shall be deemed the handler.

(7) Remitted to the department by the first handler, along with an assessment form, at the end of each month during the marketing season.

(8) Deposited in the Department of Food and Agriculture Fund or, upon the recommendation of the committee, deposited in accordance with Section 227 or Article 2.5 (commencing with Section 230) of Chapter 2 of Part 1 of Division 1.

(b) In no case shall:

(1) The total amount reimbursed to all counties exceed the total amount collected from the producers in all counties, unless reserve moneys are required for the frost inspection program. However, the authorized expenditures shall not exceed the combined total of reserve moneys and revenue received in that fiscal year.

(2) The reimbursement to any county exceed the amount approved by the committee and concurred in by the secretary.

(c) If the inspection program is terminated and there are insufficient funds to cover the cost of terminating the inspection program, the assessment shall continue until all those costs are recovered.

(d) The committee may recommend to the secretary an assessment less than the amount specified in subdivision (a) or that no assessment be collected from growers of navel oranges, Valencia oranges, lemons, or mandarin citrus varieties if no inspection program or crop survey exists for that particular orange or citrus variety. If no assessment is collected from an orange or citrus variety that has a representative on the committee, the secretary may designate a representative to the committee from an orange or citrus variety that is assessed.

(e) The adoption, amendment, or repeal of assessment rates pursuant to this section shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. An order to adopt, amend, or repeal the regulations concerning assessment rates pursuant to this section shall be transmitted within 30 days by the secretary to the Office of Administrative Law. The Office of Administrative Law shall file the order promptly with the Secretary of State without further review pursuant to Article 6 (commencing with

Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The order shall do all of the following:

(1) Indicate that the regulations are being adopted, amended, or repealed pursuant to this chapter.

(2) State that the order is being transmitted for filing.

(3) Request that the Office of Administrative Law publish a notice of the filing of the order and print an appropriate reference in Title 3 of the California Code of Regulations.

SEC. 3. Section 48002.5 of the Food and Agricultural Code is amended to read:

48002.5. For purposes of this chapter, the following definitions apply:

(a) “Carton” means a unit equivalent to 40 pounds of citrus fruit.

(b) “Mandarin citrus” means mandarins, including tangerines and mandarin hybrids.

SEC. 4. Section 48003 of the Food and Agricultural Code is amended to read:

48003. (a) Upon establishment of an inspection program, any handler who does not file the required assessment report and assessments by the 10th day of the month following the month for which the assessment is payable shall pay a penalty of 10 percent of the assessment owed and, in addition, 1.5 percent interest per month on the unpaid balance.

(b) Upon establishment of an inspection program, it shall be unlawful for any handler to refuse to collect the assessments or remit the assessments and the proper forms required by this chapter.

(c) A handler shall not charge a producer an administrative fee for collecting or remitting an assessment.

(d) A producer who disputes the amount of the assessment may file a claim with the secretary. The producer shall prove his or her claim by a preponderance of the evidence.

(e) A producer may not bring a claim against a handler for damages, or otherwise, in connection with the assessment or the required deduction by the handler of the moneys owed to the producer.

SEC. 5. Section 75540 of the Food and Agricultural Code is repealed.

SEC. 6. Section 76750 of the Food and Agricultural Code is amended to read:

76750. The duties of the council shall be advisory, except as to those duties that may be delegated to it by the secretary or as otherwise designated in this chapter. The council may, subject to the approval of the secretary, exercise any of the following powers that may be delegated to the council by the secretary:

(a) To recommend to the secretary administrative regulations that relate to the administration and enforcement of this chapter.

(b) To investigate all matters that affect the administration of this chapter, and to report violations of this chapter to the secretary.

(c) To employ and, at its pleasure, discharge a manager and such clerical help and other employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

(d) To contract with, or employ, and at its pleasure, discharge any other persons that it deems necessary, and in the cases of those persons it shall employ, to outline their powers and duties and fix their compensation.

(e) To establish offices and incur expenses incidental thereto.

(f) To make contracts and other agreements that may be proper to promote the sale of salmon and salmon products on either a local, state, national, or international basis.

(g) (1) To cooperate with any other local, state, or national commission, organization, or agency, whether voluntary or created by state or federal law, including, but not limited to, the Oregon Salmon Commission, the West Coast Fisheries Development Foundation, the Coastal Fisheries Foundation, and the National Fish and Seafood Promotion Council, that is engaged in work or activities similar to the work and activities of the council, and to recommend to the secretary the making of contracts and agreements with those organizations or agencies for carrying on joint programs of education, research, publicity, and advertising.

(2) To recommend to the secretary the making of contracts and agreements with other councils, commodity commissions, or producer organizations for joint programs of publicity and advertising where those products are compatible with the promotion of salmon and salmon products.

(3) In matters of research, to cooperate with organizations of recognized professional standing that are adequately equipped with facilities for the research that is contemplated.

(h) To recommend to the secretary the institution and promotion of scientific research to develop or discover, or both, the health, food, therapeutic, dietetic, and other uses of salmon.

(i) (1) To receive, invest, and disburse funds pursuant to Article 8 (commencing with Section 76900).

(2) To allocate funds to agencies not specifically or solely engaged in carrying on research or promotion for salmon, if the council and the secretary are satisfied that those allocations will be beneficial to the California salmon fishery and will tend to effectuate the declared purposes of this chapter.

(j) To present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect this chapter.

SEC. 7. Section 79222 of the Food and Agricultural Code is amended to read:

79222. “Marketing season” or “fiscal year” are synonymous terms and mean the period beginning March 1, 2010, to September 30, 2011, and, thereafter, October 1 of any year and extending through September 30 of the following year.

SEC. 8. Section 79271 of the Food and Agricultural Code is amended to read:

79271. (a) The commission shall, not later than March 1, 2010, or as soon thereafter as possible, establish the assessment to be paid by the producers and handlers for the marketing season. Thereafter, the commission shall, not later than October 1 of each year, or as soon thereafter as possible, establish the assessment to be paid by the producers and handlers for the

marketing season. The assessment shall not be more than two and one-half cents (\$0.025) per pound for blueberries handled. Of the assessment one-half shall be assessed to producers, and one-half shall be assessed to handlers.

(b) An assessment greater than the amounts in this section may not be charged unless it is approved in accordance with the voting requirements of Section 79262.

SEC. 9. Section 79292 of the Food and Agricultural Code is amended to read:

79292. Following a hearing, and favorable referendum if required, the process specified in Section 79291 shall be conducted by the secretary every five years thereafter between October 1 and September 30, unless a referendum is conducted as the result of a petition pursuant to Section 79293. In that case, the hearing, and referendum if required, shall be conducted every five years following the industry petitioned referendum.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.